

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* NIR HADAR

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Application 10/826,293  
Technology Center 3700

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MAILED

DEC 28 2007

U.S. PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

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This Image File Wrapper (IFW) application was electronically received at the Board of Patent Appeals and Interferences on December 4, 2007. A review has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner. The matters requiring attention prior to docketing are identified below:

The Examiner has failed to list prior art relied upon in the 35 U.S.C. § 103(a) rejection currently on appeal under the heading “**(8) Evidence Relied Upon**” in the Examiner’s Answer mailed April 26, 2007. Reference to Box (U.S. Patent 4,044,910) and *Merriam-Webster Online Dictionary* (definition of the term “between”) are relied upon in paragraphs 9 and 10, pages 4 and 6 of the Examiner’s Answer but not listed as required by the *Manual of Patent Examining Procedure (MPEP)* § 1207.02(A)(8).

Before further review, the Examiner must mail a PTOL-90 that will include in the amended Evidence Relied Upon section, the list of all references mentioned and

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provide a copy of any NPL/Foreign reference which is not presently of record. *See MPEP § 1207.02.* Appropriate correction is required.

Further review reveals that the Appellant has made reference to Dictionary terms (which is technically considered evidence that was not properly submitted under the “Evidence Appendix” for the Examiner to consider) into the Appeal Brief received by the Office on February 6, 2007. (*See Appeal Brief at 8*)(Definition of word “between” lists two internet sources [www.m-w.com](http://www.m-w.com) and <http://dictionary.cambridge.org>). No new matter can be entered into the record after appeal unless it overcomes any of the rejections currently on appeal. It is unclear in the Examiner’s Answer if this new evidence submitted by the Appellant has overcome any of the rejections presently on appeal. Clarification for the written record is required. *See 37 C.F.R. §§ 41.33 and 41.37.*

Accordingly, it is *ORDERED* that the application is returned to the Examiner:

- (1) to issue and mail a PTOL-90 having the missing references listed under the Evidence Relied Upon section, paragraph (8);
- (2) to provide a copy of any NPL/Foreign document that is relied upon and not presently of record;
- (3) to clarify the status of the Evidence submitted by Appellant after Appeal in the Appeal Brief in regards to the status of the rejections presently on appeal; and

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(4) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

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